FORCED MIGRATION AND HUMAN RIGHTS:
REFUGEES, IDPs, VICTIMS OF TRAFFICKING

Harvard Law School / Harvard Kennedy School
HLS Course No. LAW-38230A / HKS Course No. IGA 345
Fall 2011

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Class Meetings: Tuesday, 5:00 – 7:00 PM
Harvard Law School, Pound Hall (Room 201)

Office Hours: Tuesday, 3:00 – 4:30 p.m.
Harvard Kennedy School, David Rubinstein 218

Course Assistant: Heather Houston
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COURSE OVERVIEW

Migration is a critical survival strategy for millions in today’s world. Yet the ability to migrate legally and safely is unequally distributed, a luxury for many of the populations who need it most. This course explores differing types of contemporary forced migration, including refugee flight, asylum seeking, internal displacement, trafficking. It analyses policy responses to these migrations, including “safe havens”, temporary and humanitarian protection, refugee camps, detention, interception on the high seas, and deportation. It also considers psychological responses to forced migration including trauma and other forms of individual and social suffering.

The course analyses the role of UNHCR as protector and gatekeeper, and the institution of asylum, as a migration control tool for states and a human rights protection for individuals. It questions whether effective refugee protection can survive in an international order dominated by security concerns and advance warning systems and explores human rights protections (including under the Convention against Torture) available to threatened individuals and populations. The course also explores the root causes of trafficking and strategies for better protecting trafficked persons. Comparative materials, including case law and human rights reports, from the United States, Europe, Australia, and Africa are used to explore implementation and examine policy developments related to forced migration.
EVALUATION

Class participation and discussion count for 20% of the class grade. There are three additional requirements for this class:

1. **Paper.** One 15 page paper (1.5 spaced) must be submitted in hard copy no later than 5:00 p.m. on December 16 (no extensions) to the course assistant in Pound Hall (room to be confirmed). This counts for 60% of the grade for the class. If a grade is needed by an earlier date to graduate, please contact Prof. Bhabha. Paper topics must be sent to the course assistant via email by October 25. A list of suggested topics will be handed out in class, but students are encouraged to select their own topic (topics not on the list have to have the approval of the instructor, but if they fall within the broad remit of the class this is routinely granted). *Writing Requirement:* If appropriate the paper can fulfill the law school writing requirement, though to get extra credit students need to submit a 20 page paper.

2. **Written Responses.** Six brief written responses (500 words or less) must be submitted to the course assistant no later than 9:00 am on the day of class (via the Dropbox on MyHLS / the course website). You can choose which classes to write a response for. This counts for 20% of the class grade. Please do not exceed 500 words. The responses are required and Prof. Bhabha will read them but only comment on 2 of them. They should be analytical and not descriptive. You are not required to comment on all the readings but to pick out issues which you find particularly interesting. You should indicate an issue you would like to discuss in class.

3. **Class Presentation.** Students who have worked with refugees, IDPs, victims of trafficking or have other directly relevant experience may be invited to make a brief presentation during the last 10 minutes of class; these students will only have to write 4 responses (rather than 6). The presentation will count for 10% of the class grade, and the 4 responses for 10%. By September 19, 2010, all students interested in doing this should send to the course assistant via email a short (one paragraph) description of their relevant experience, the topic they would like to present and the date of the class they consider most appropriate for this.

COURSE MATERIALS

**Required Materials**
- Required materials assigned for reading will be included in the course packet.

**Useful Reference Books**


Useful Websites

**Forced Migration**

• Forced Migration Online – [www.forcedmigration.org](http://www.forcedmigration.org)

• Forced Migration Review – [www.fmreview.org/mags1.htm](http://www.fmreview.org/mags1.htm)

**Refugees and Asylum**

• AsylumLaw.org – [www.asylumlaw.org](http://www.asylumlaw.org)

• Canadian Immigration and Refugee Board – [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca)

• European Council on Refugees and Exiles – [www.ecre.org/](http://www.ecre.org/)

• International Committee of the Red Cross – [www.icrc.org](http://www.icrc.org)

• International Organization for Migration (IOM) – [www.iom.int](http://www.iom.int)

• Refugee Law Reader – [www.refugeelawreader.org](http://www.refugeelawreader.org)

• Refugee Media Project – [www.refugemediaproject.org](http://www.refugemediaproject.org)

• Southern Refugee Law Center – [www.srlc.org](http://www.srlc.org)

• UN Office of the High Commissioner for Refugees (UNHCR) – [www.unhcr.org](http://www.unhcr.org)

• UN Global Migration Group – [www.globalmigrationgroup.org](http://www.globalmigrationgroup.org)
• University of California, Hastings College of the Law, Center for Gender and Refugee Studies – http://cgrs.uchastings.edu
• University of Michigan Law School, Refugee Caselaw Site – www.refugeecaselaw.org
• US Refugee Committee – www.refugees.org;

Human Rights
• Amnesty International – www.amnesty.org
• Human Rights Watch – www.hrw.org
• UN Office of the High Commissioner for Human Rights (OHCHR) – www.ohchr.org

Internal Displacement
• Internal Displacement Monitoring Centre – www.internal-displacement.org

Human Trafficking
• UN Office on Drugs and Crime (UNODC), Human Trafficking and Migrant Smuggling - www.unodc.org/unodc/en/human-trafficking/index.html
• UN Global Initiative to Fight Human Trafficking (GIFT) - www.ungift.org/knowledgehub

Torture
• International Rehabilitation Council for Torture Victims – www.irct.org

News, Analysis and Research
• Center for Immigration Studies – www.cis.org
• IRIN Humanitarian News and Analysis - www.irinnews.org/Theme.aspx?theme=REF
• Migration Policy Institute – www.migrationpolicy.org
• UNHCR RefWorld – www.unhcr.org/refworld
PART I: FORCED MIGRATION AND THE INTERNATIONAL COMMUNITY

(September 13)

Articles

Discussion Topics
- According to Arendt, the right to asylum, despite its “long and sacred history”, was considered to be in conflict with “the international rights of the [nation] state”. Why? And why do states commit to protecting foreigners today?
- “States constitute the primary nexus when it comes to security for individuals and groups”; at the same time “the principal threats to …human security … are transnational in nature”. Is the opposite true for refugees and asylum seekers? With transnational globalization expanding, are states still the “primary nexus” of security for individuals?
- What difference does border crossing make to the international community's humanitarian obligations? Why?
- “Refugee status is a privileged category vis-a-vis other classes of coerced migrants.” What other classes are there and do they require international protection?

2. WHO IS A REFUGEE? THE INTERNATIONAL DEFINITION (September 20)

Visit to Class by Aslihan Bulut, International Law Librarian, HLS.

Articles

Cases
3. *Chen v. Holder*, 604 F.3d 324 (7th Cir. 2010).
Sources
3. 1951 Convention Relating to the Status of Refugees. Read Art. 1(A)2; 12-34.

Discussion Topics
• Is the 1951 Convention definition a refugee outmoded in the post-Cold War era? How do Shacknove, Surkhe and Martin’s suggested definitions (discussed in Reading 2) differ?
• Is being individually targeted for persecution required for refugee protection under international law, or is it sufficient to be a member of a targeted group?
• Does economic destitution compromise eligibility for refugee protection?

3. INTERNATIONAL PROTECTION BEYOND THE 1951 CONVENTION: MIGRANTS FLEEING GENERALIZED VIOLENCE AND IDPS (September 27)

Articles

Sources
2. 1984 Cartagena Declaration on Refugees.
Discussion Topics

- What are the principal differences between the 1951 Convention and the OAU Convention? What are the gains and losses of the two different approaches? Has the idealism of the OAU Convention been implemented in current practice?
- How has the legal scope of refugee protection expanded since the ’51 Convention?
- Examine the working definition of internally displaced persons. Compare it to the Refugee Convention, OAU and Cartagena declaration definitions. Which groups are included that fall outside other forms of international protection? How are internally displaced persons protected under international law, if at all?
- Sovereignty as responsibility: when does international responsibility displace state sovereignty?

4. WHO PROTECTS FORCED MIGRANTS? — THE COMPLEX ROLE OF UNHCR (October 4)

Paper Topics to be circulated.

Articles

7. UNHCR and Save the Children UK, Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone, www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.pdf?id=3c7cf89a4&tbl=PARTNERS.

Sources

Discussion Topics

- What is UNHCR's "core" function? What additional duties has UNHCR assumed, beyond the core protection function? Do they impinge on UNHCR’s capacity - as the ‘qualified representative of international public order’ - to assert claims on behalf of refugees?
- What restrictions does the “non-political” character of UNHCR realistically impose on its operations? How do you assess the different perspectives of Ogata, De Waal and Harrell-Bond et al?
- The end of bipolarism has led to increased interventionism by UN agencies (and NGOs). How does this affect the agencies’ neutrality and what mechanisms for accountability exist? To whom should the agencies be held accountable?
- Is UNHCR’s emphasis on refugee camps and on repatriation realistic, appropriate, suspect? Are there alternatives?
- Contrast Shacknove’s approach to refugee protection with evolving UNHCR practice in respect of IDPs. Could/should a single system of international protection address problems of internal displacement and search for asylum? Are there dangers/benefits for the refugee concept that arise from work with IDPs by refugee protection agencies?

***Tuesday, October 11 — NO CLASS

5. GENDER (October 18)

Articles

Sources
1. UN Convention on Status of Refugees. Read Art. 1(a).
2. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. Read Arts. 1 – 3.

Discussion Topics

- Is the absence of “gender” as a ground of persecution in the Refugee Convention an obstacle to securing protection for women?
- Are women seeking asylum relatively disadvantaged by their gender (as usually claimed) or advantaged as more plausible “victims”?
- Is the applicant in In re R-A the only member of her “particular social group”? If yes, does this constitute a problem in gaining refugee protection. If not, why not?
• What constitutes a “social group” for the purposes of the Refugee Convention? Is “social visibility” a coherent criterion? If not, how does one narrow down social group membership beyond the commonality of being a target for persecution?
• Can a parent claim asylum on the basis of possible future persecution of his or her accompanying minor child?

6. TREATING PTSD AND OTHER SURVIVAL STRATEGIES: JUSTICE, RECONCILIATION, REHABILITATION
(Friday, October 21 — 3:00 to 5:00 pm, Pound 207)

Visit by Kaethe Weingarten, Director, the Witnessing Project; Associate Clinical Professor of Psychology at Harvard Medical School.

Articles

7. CHILDREN (October 25)

Paper Topics Due.

Articles

Cases
1. Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000). Read 1344-1347 (up to A); 1351 (from Para 29-31) to 1354 (up to C).
2. Castellano-Chacon v. INS, 341 F.3d 533 (6th Cir. 2003). Read Sections I, II, and VII. Available online.
4. Nwaokolo v. INS, 314 F.3d 303 (7th Cir. 2002). Read 304-305 (up to A); 307 (from 1) to 311.

Sources
1. UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08.

Discussion Topics
- Do children's asylum claims present any special features?
- In what circumstances, if any, should a parent be able to prevent a child from making an asylum claim?
- Is a family a social group for asylum purposes?
- Should different standards for granting refugee protection apply to unaccompanied or separated children? Are there risks?

8. TRAFFICKING: PART 1 (November 1)

Are victims of trafficking refugees and therefore eligible for international protection under the refugee convention?
Articles
3. Jacqueline Bhabha and Christina Alfirev, “The Identification and Referral of Victims of Trafficking to Procedures for Determining International Protection Needs”, October 2009 (Geneva: UNHCR). Read 7-21 (end para. 43); 31-37 [online materials section of class page].

Cases:

Sources

Discussion Topics
- The majority of refugees in Europe (and many in the US) have been smuggled or trafficked. Why?
- What is the difference between “smuggling” and “trafficking.” Can the difference be characterized effectively by one or two variables?
- “Increasing restrictionism in immigration breeds asylum abuse, false documents and trafficking rings.” Is there a way out of this that does not violate international law?
- What are the advantages and disadvantages of the US State Department approach to trafficking as set out in the TIP report?
- Do victims of trafficking have access to international protection? Should they and if so how should this be implemented?

9. VICTIMS OF TRAFFICKING: PART 2 (November 8)
**What are the causes of trafficking? What are states responsibilities? What are the most promising strategies for protecting trafficked persons and preventing recruitment?**

*Visit by Siddharth Kara, Fellow, Carr Center Program on Human Trafficking and Modern-Day Slavery.*

**Articles**


**Sources**


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**PART II: NEW CHALLENGES TO THE PROTECTION OF FORCED MIGRANTS**

**10. EXCLUDING FREEDOM FIGHTERS AND TERRORISM SUSPECTS**

(November 15)

**Articles**


**Case:**

Discussion Topics

• Is US law in conformity with the exclusion clauses of the Refugee Convention?
• What are the relevant factors for making the distinction between a “political” and a “non-political” offence? Consider Aguirre-Aguirre in particular.
• What is the relationship between Art. 1(F) and Art. 33.2 of the 1951 Convention? What different dangers/prohibited conducts do they address? What are the minimum standards of procedural fairness required by international law? How do they compare with current US practice?
• Why should those who have been convicted of serious non-political crimes be excluded from refugee protection? What if a state, as the US recently, enlarges the category of “serious crime” to include behavior punished by a one year jail sentence?
• Consider the application of the definition of “terrorist” and the use of the “material support” bar in current US immigration law; do they provide a clear guide to exclusion? Do they conform to international guidelines?

11. MANAGED MIGRATION AND ENHANCED BORDER CONTROL
(Friday, November 18 — 3:00 to 5:00 pm, Pound 207)

Articles

Sources
Cases

Discussion Topics
- Both the US and EU states face a filtering challenge at their borders, resulting from the conflict between facilitating trade and controlling unwanted migration. Do they offer the bona fide asylum seeker equal chances of effective protection? What are the most significant differences?
- As European integration proceeds, which aspects of border control have been “de-coupled” from individual states? Which aspects have been jealously guarded by states? Is free movement within the EU compatible with current EU refugee policy? What are the differences between refugees and asylees in US policy? What procedures apply to each group? Do foreign policy considerations still affect U.S. refugee policy and practice?
- Do states have responsibility for asylum seekers who never reach their territory?

***Tuesday, November 22 — NO CLASS***

12. THE FUTURE OF INTERNATIONAL PROTECTION FOR FORCED MIGRANTS
(November 29)

Articles

Sources
Discussion Topics

- What is the future of refugee protection? “Can we think of humanitarian law, refugee law and human rights law as three overlapping circles of international protection for victims of conflict, persecution and oppression? What are the significant differences or potential tensions between the three frameworks and how might they complement or reinforce one another?”
- Protection or deterrence: what other options exist? Are the concepts of “temporary protection” and “safe haven” a supplement or a substitute for refugee protection?
- What new global problems impinge on current models and frameworks of refugee protection?
- “The results of a freer 'market' in asylum seeking can only be guessed at”. What other alternatives are there? Are environmentally displaced persons refugees? Are they legally entitled to international protection?

***Friday, December 16 — PAPERS DUE (HARD COPY) AT 5:00 PM***